IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 20588 of 1999(A)

PETITIONER:

M.SALILAN (EX.NO.861162052)
S/O.K.G.NAIR, MUKKUTHAYIL HOUSE,
VALLIYAYI, P.O.PATHAYAKUNNU,
KANNUR DIST.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENTS:

1.THE DEPUTY INSPECTOR GENERAL OF POLICE,
CENTRAL RESERVE POLICE FORCE, MADRAS RANGE,
AVADY, CHENNAI-65.

2.THE PRINCIPAL, RECRUITS TRAINING CENTRE-II,
CENTRAL RESERVE POLICE FORCE,
AVADI, CHENNAI-65.

3.THE DIRECTOR GENERAL OF POLICE,
CENTRAL RESERVE POLICE FORCE,
LODHI ROAD, NEW DELHI-3.

BY ADV.
SRI.JOHN VARGHESE, ASSISTANT SG

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.34024/99 IN O.P.NO.20588/99

DISMISSED

31.1.2007. SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF ORDER NO.D-II-1/86-AVADI DT. 24.9.87 ISUSED BY THE SECOND RESPONDENT.

EXT.P2 : TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 3RD RESPONDENTS AND OTHER AUTHORITIES.

EXT.P3 : TRUE COPY OF LETTER NO.A.VI.7/94 CC DT. 15.7.94 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P4 : TRUE COPY OF LETTER NO.D.V-1/94 TRG-12 DT. 28.10.94 ISSUED BY THE THIRD RESPONDENT.

EXT.P5 : TRUE COPY OF LETTER NO.W.V.1/95 ADM-II(RE-SETT) DT. 14.11.95 ISSUED BY THE THIRD RESPONDENT.

EXT.P6 TRUE COPY OF PROFORMA FILED BY THE PETITIONER SENT TO THE FIRST RESPONDENT.

EXT.P7 TRUE COPY OF REMINDER SENT BY THE PETITIONER TO THE THIRD RESPONDENT ON 7.4.97.

EXT.P8 TRUE COPY OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE HOME MINISTER ON 28.8.98.

EXT.P9 TRUE COPY OF LETTER NO.C.IV.1/98-EC-5 DT. 26./11.98 ISSUED BY THE FIRST RESPONDENT.

EXT.P10 TRUE COPYOF JUDGMENT DT. 8.4.99IN O.P.9309/99 OF THIS HON'BLE COURT.

EXT.P11 TRUE COPY OF REPRESENTATION DT. 23.4.99 FILED BY THE PETITIONER BEFORE THE THIRD RESPONDENT.

EXT.P12 TRUE COPY OF LETTER DT. 23.6.99 SENT BY THE THIRD RESPONDENT TO THE PETITIONER.

TGS

KURIAN JOSEPH, J.

O.P.No.20588 of 1999

Dated 31st January, 2007.

J U D G M E N T

The writ petition is filed mainly with the following prayers :-

> (i) "Issue a writ of mandamus or other appropriate writ, order or direction, directing the 1st and 3rd respondents to provide alternate employment to the petitioner as Typist/Clerk forthwith;
>
> (ii) Issue a writ of mandamus or other appropriate writ, order or direction directing the 1st and 3rd respondents to grant disability pension to the petitioner with effect from the date of his discharge from CRPF with 18% interest;
>
> (iii) Issue a writ of certiorari or other appropriate writ, order or direction calling for the originals of Exts.P3, P4, P9 and P12 and to quash the same."

The facts to the extent not disputed and stated in the counter affidavit read as follows :-

> "No.861162052 Ex Rt. M.Salilan was enrolled as a Constable in Group Centre, CRPF, Avadi on 9.12.86 and was undergoing basic training in the Recruits Training Centre-II, CRPF, Avadi. While undergoing training he sustained injury on his left leg on 4.4.1987 and was referred to KMC hospital, Madras where he underwent an operation on 18.4.87. The petitioner remained admitted in CRPF Station Hospital from 2.5.87 to 30.5.87 and discharged with 6(six) weeks rest. MO I/C Station Hospital, after reviewing his case opined that being the weight bearing bone of body, he cannot undertake active training for minimum another 2 years....."

> "As he could not undergo full basic training and as the MO 1/C declared him unfit for undergoing training for a minimum period of 2 years with further opinion that in any case, he cannot be an active member of the Force and being a temporary Govt. servant, his service were terminated under Rule 5(1) of CCS Temporary Service Rules, by the Competent Authority."

It is the contention of the learned Assistant Solicitor General that being a temporary constable, found unfit to undergo the full basic training, he was rightly terminated from service with effect from 24.9.1987. It is further submitted that there is no provision for any kind of pension when a temporary Government servant is terminated from service. As far as alternate employment is concerned, it is submitted that since CRPF is a para-military force, all posts are 'combatised' and that the upper age limit is 25 years. As stated in the impugned Ext.P12, since the petitioner was 32 at the time of consideration of his request in 1999, alternate employment also cannot be provided.

2. Learned counsel for the petitioner submits that in view of the decision of the Supreme Court in **Kunal Singh v. Union of India and another** (2003)4 SCC 524), the petitioner is entitled to the benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It is seen from

the judgment that the Supreme Court repelled the stand taken by the Central Government that for want of provision in the rules, no pension could be granted. The Apex Court has held that once disability is not in dispute, a person cannot be discharged from service on that ground. Suitable alternate employment has to be provided and if no such employment is available, the disabled employee has to be given pension. No distinction whatsoever is to be made between a temporary or permanent employee. No technical plea shall stand in the way of the benefit of the Act given to a disabled employee, the disability being in the course of employment. In this context, it will be profitable to extract paragraph 12 of the judgment, which reads as follows :-

> "12. Merely because under Rule 38 of the CCS (Pension) Rules, 1972, the appellant got invalidity pension is no ground to deny the protection, mandatorily made available to the appellant under Section 47 of the Act. Once it is held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay scale and service benefits; if it was not possible to adjust him against any post, he could be kept on a supernumerary post until a suitable post was available or he attains the age of superannuation, whichever is earlier. It appears no such efforts were made by the respondents. They have proceeded to hold that he was permanently incapacitated to continue in service without considering the effect of other provisions of Section 47 of the Act."

I quash the impugned orders. There will be a direction to the third

respondent to either provide a suitable employment to the petitioner, ignoring the contention regarding age limit, since the petitioner has been pursuing his grievance before the authorities. If such a suitable employment cannot be provided to the petitioner, he shall be granted the invalid pension. The needful shall be done within a period of three months from the date of production of a copy of the judgment by the petitioner.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No.20588 of 1999 (A)

J U D G M E N T

Dated 31st January, 2007.